

(b) In those States in which incentive payments are passed through to political subdivisions or localities, such payments must be used in accordance with this section.

(c) State IV-D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

(d) A base amount will be determined by subtracting the amount of incentive funds received and reinvested in the State IV-D program for fiscal year 1998 from the total amount expended by the State in the IV-D program during the same period. Alternatively, States have an option of using the average amount of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending must be maintained in future years. Incentive payments under this part must be used in addition to, and not in lieu of, the base amount.

(e) Requests for approval of expending incentives on activities not currently eligible for funding under the IV-D program, but which would benefit the IV-D program, must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement.

#### § 305.36 Incentive phase-in.

The incentive system under this part will be phased-in over a three-year period during which both the old system and the new system will be used to determine the amount a State will receive. For fiscal year 2000, a State will

receive two-thirds of what it would have received under the incentive formula set forth in § 304.12 of this chapter, and one-third of what it would receive under the formula set forth under this part. In fiscal year 2001, a State will receive one-third of what it would have received under the incentive formula set forth under § 304.12 of this chapter and two-thirds of what it would receive under the formula under this part. In fiscal year 2002, the formula set forth under this part will be fully implemented and would be used to determine all incentive amounts.

#### § 305.40 Penalty performance measures and levels.

(a) There are three performance measures for which States must achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are the paternity establishment, support order establishment, and current collections measures set forth in § 305.2 of this part. The levels the State must meet are:

(1) *The paternity establishment percentage* which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV-D paternity establishment percentage or the statewide paternity establishment percentage defined in § 305.2 of this part. Table 4 shows the level of performance at which a State will be subject to a penalty under the paternity establishment measure.

TABLE 4—STATUTORY PENALTY PERFORMANCE STANDARDS FOR PATERNITY ESTABLISHMENT  
(Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty.)

PEP	Increase required over previous year's PEP	Penalty FOR FIRST FAILURE if increase not met
90% or more .....	None .....	No Penalty.
75% to 89% .....	2% .....	1–2% TANF Funds.
50% to 74% .....	3% .....	1–2% TANF Funds.
45% to 49% .....	4% .....	1–2% TANF Funds.
40% to 44% .....	5% .....	1–2% TANF Funds.
39% or less .....	6% .....	1–2% TANF Funds.

(2) The support order establishment performance measure is set forth in § 305.2 of this part. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State will be penalized unless

an increase of 5 percent over the previous year is achieved—which will qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase will not be penalized but neither will it